

## **EXHIBIT B-3**

**EXHIBIT B-3**

<p style="text-align: right;">Page 194</p> <p>1 FUERMAN</p> <p>2 paragraph 12 talks about "retroactive"?</p> <p>3 A. Retroactive, that's easier to define</p> <p>4 because that's what I have focused on. They</p> <p>5 first discuss, in paragraph 13 of APB 20, what</p> <p>6 is the definition of the correction of an</p> <p>7 error in previously issued financial</p> <p>8 statements. In another paragraph they</p> <p>9 describe that that is supposed to be restated.</p> <p>10 Q. Well, let's just stay on APB</p> <p>11 paragraph 13. Nothing in there talks about</p> <p>12 retroactive treatment, does it?</p> <p>13 A. I believe that's in paragraph 38.</p> <p>14 Q. To answer my question though,</p> <p>15 paragraph 13 itself does not discuss</p> <p>16 retroactive treatment?</p> <p>17 A. That's correct.</p> <p>18 Q. You indicated that paragraph 38</p> <p>19 does?</p> <p>20 A. I believe. Let me work through</p> <p>21 this.</p> <p>22 Q. Okay.</p> <p>23 A. It says, "If a change or correction</p> <p>24 has a material affect on income before</p> <p>25 extraordinary items or on net income of the</p>	<p style="text-align: right;">Page 196</p> <p>1 FUERMAN</p> <p>2 Q. Yes.</p> <p>3 A. "The board concludes that correction</p> <p>4 of an error in the financial statements of a</p> <p>5 prior period discovered subsequent to their</p> <p>6 issuance, and that refers back to paragraph</p> <p>7 13," the correction of error paragraph,</p> <p>8 "should be reported as a prior period</p> <p>9 adjustment." "Prior period adjustment" means</p> <p>10 restatement.</p> <p>11 Q. You believe that "prior period</p> <p>12 adjustment" and "restatement" are synonymous?</p> <p>13 A. Yes.</p> <p>14 Q. Based upon your review?</p> <p>15 A. Yes.</p> <p>16 Q. So 36 is the paragraph that talks</p> <p>17 about retroactive treatment?</p> <p>18 A. Yes.</p> <p>19 Q. Is that your final answer?</p> <p>20 A. It's somewhat in artfully written,</p> <p>21 APB 20. You almost have to read together</p> <p>22 paragraph 13, 36 and 37 and even 38, to get a</p> <p>23 sense of what is supposed to be done. It</p> <p>24 would be a little tricky to figure it out just</p> <p>25 looking at APB No. 20.</p>
<p style="text-align: right;">Page 195</p> <p>1 FUERMAN</p> <p>2 current period before the effect of the</p> <p>3 change, the treatments and disclosures</p> <p>4 described in this opinion should be followed.</p> <p>5 Q. That talks about the current period,</p> <p>6 correct?</p> <p>7 A. We have to go back actually to</p> <p>8 paragraph 37, that's where this determines the</p> <p>9 nature. It says, "The nature of an error in</p> <p>10 previously issued financial statements and the</p> <p>11 affect of its correction on income before</p> <p>12 extraordinary items, net become and the</p> <p>13 related per share amounts should be disclosed</p> <p>14 in the period in which the error was</p> <p>15 discovered and corrected. Financial</p> <p>16 statements of subsequent periods need not</p> <p>17 repeat the disclosures."</p> <p>18 Q. That doesn't talk about retroactive</p> <p>19 application either, does it?</p> <p>20 A. It's understood. It's also</p> <p>21 mentioned paragraph 36. "The board concludes</p> <p>22 correction of an error of financial statements</p> <p>23 of a prior period discovered subsequent to</p> <p>24 their issuance, and in parens, I'm reading now</p> <p>25 from subparagraph 36.</p>	<p style="text-align: right;">Page 197</p> <p>1 FUERMAN</p> <p>2 It's well accepted in the accounting</p> <p>3 literature that errors are to be corrected</p> <p>4 with a restatement of prior periods.</p> <p>5 Q. I don't see the word "restatement"</p> <p>6 in APB 20. Does it appear anywhere in there?</p> <p>7 A. You know, it does, but maybe not as</p> <p>8 often as people would like. Maybe because the</p> <p>9 word just wasn't used as much in 1970 or 1971</p> <p>10 than it is today.</p> <p>11 Q. Can you fine the word "restatement"</p> <p>12 in APB 20?</p> <p>13 A. Prior period adjustment is</p> <p>14 understood to many restatement. The word</p> <p>15 "restate" or "restating" occurs in paragraph</p> <p>16 14, subparagraphs A, B, C and D, each of them.</p> <p>17 They use the word "restating" over and over in</p> <p>18 paragraph 14. Why they don't use it so much</p> <p>19 in the rest of APB No. 20, even though</p> <p>20 everybody who reads this stuff understands</p> <p>21 "prior period adjustment" means a restatement.</p> <p>22 Q. Page 7 of your --</p> <p>23 A. Although, sometimes you will see in</p> <p>24 the literature they will refer also to the</p> <p>25 cumulative -- reporting the cumulative effect</p>

50 (Pages 194 to 197)

<p style="text-align: right;">Page 198</p> <p>1 FUERMAN</p> <p>2 of the change in this year's income statement,</p> <p>3 they will sometimes put that down or think of</p> <p>4 that as a "restatement."</p> <p>5 Q. Page 7, carryover paragraph of your</p> <p>6 opinion, which is paragraph 13 of Plaintiffs'</p> <p>7 Exhibit 115. You make the statement that a</p> <p>8 "restatement" is appropriate if and only if</p> <p>9 the "correction has a material affect on</p> <p>10 income before extraordinary items or on net</p> <p>11 income," then there is an ellipse, "or a</p> <p>12 material affect on the trend of earnings," and</p> <p>13 you cite APB 20, paragraph 38?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. You left out quite a bit of</p> <p>16 language in those ellipses?</p> <p>17 A. Let's read the entire thing then.</p> <p>18 Q. Okay. If I'm going from the right</p> <p>19 place, it says in the middle of APB 20,</p> <p>20 paragraph 38, "If a change or correction has a</p> <p>21 material affect," this is where we pick up</p> <p>22 your quote, "has a material affect on income</p> <p>23 before extraordinary items or on net income of</p> <p>24 the current period." Do you see that?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 200</p> <p>1 FUERMAN</p> <p>2 you?</p> <p>3 MR. BRAUTIGAM: Objection. Please</p> <p>4 let the witness finish his answer.</p> <p>5 A. What I mean is it's not terribly</p> <p>6 artfully described. When they say here</p> <p>7 "current period," in the context of this they</p> <p>8 are talking about that particular period that</p> <p>9 got messed up. That's what they mean.</p> <p>10 It couldn't be the current period</p> <p>11 logically, think of it. If it were the</p> <p>12 current period that the company was putting</p> <p>13 the financial statements together on, as in</p> <p>14 the spring, the early spring of 2003 PFGI was</p> <p>15 putting together the current statements of</p> <p>16 yearend 12/31/2002, there's no restating</p> <p>17 that's going to happen to the 12/31/2002</p> <p>18 financials that's the current period because</p> <p>19 they have not been issued.</p> <p>20 In the context of APB 20 it must</p> <p>21 mean, when they use the word "current" here,</p> <p>22 they are saying if it is 1998 got messed up</p> <p>23 you need to restate 1998 earnings per share</p> <p>24 and net income. If it is '99 that got messed</p> <p>25 up materially you've got to restate '99</p>
<p style="text-align: right;">Page 199</p> <p>1 FUERMAN</p> <p>2 Q. You left out the current period. Is</p> <p>3 there a reason why you did that?</p> <p>4 MR. BRAUTIGAM: Objection. I just</p> <p>5 want the record to reflect that there</p> <p>6 were a lot of things left out of the</p> <p>7 ellipse.</p> <p>8 MR. BURKE: I would agree with that.</p> <p>9 A. I felt that I captured the gist of</p> <p>10 paragraph 38 in that short quote that I put in</p> <p>11 there.</p> <p>12 Q. The actual language of paragraph 38</p> <p>13 talks about whether or not the change or</p> <p>14 correction has material affect on income</p> <p>15 before extraordinary items or net income of</p> <p>16 the current period, does it not?</p> <p>17 A. In using --</p> <p>18 Q. That's what it says?</p> <p>19 A. They are discussing two things in</p> <p>20 paragraph 38. There is a discussion -- no,</p> <p>21 actually I think what they mean -- again,</p> <p>22 these are accountants, not lawyers that wrote</p> <p>23 these.</p> <p>24 Q. You are an accountant, aren't you?</p> <p>25 You are a supposed expert accountant, aren't</p>	<p style="text-align: right;">Page 201</p> <p>1 FUERMAN</p> <p>2 earnings per share and net income.</p> <p>3 Q. So your testimony is "current" means</p> <p>4 past, is that your testimony?</p> <p>5 A. In the context of this paragraph,</p> <p>6 yes.</p> <p>7 Q. So current period in --</p> <p>8 A. Think about it. How could it be</p> <p>9 interpreted any other way? If it were</p> <p>10 interpreted the way you think maybe it's</p> <p>11 interpreted, then companies would never</p> <p>12 restate because they are always going to</p> <p>13 discover an error today and they could always</p> <p>14 say, well, let's just have that reflected in</p> <p>15 the most recent financial statements that</p> <p>16 we're getting ready to issue.</p> <p>17 Then there would never, ever, ever</p> <p>18 be a restatement.</p> <p>19 Q. I disagree with you. I think what</p> <p>20 this says is if the cumulative affect of the</p> <p>21 restatement is material to the current period</p> <p>22 then you fix it. If it was a \$5 error that</p> <p>23 related to 1999, that was discovered in 2003,</p> <p>24 are you telling me they would go back and</p> <p>25 restate that?</p>

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2 A. That would be turning all of

3 financial accounting on its head to make that

4 kind of interpretation. The fundamental

5 notion of accrual accounting -- ever since the

6 1940s I cite Payton and Littleton, they came

7 up with this -- is that it's really important

8 to have net income be in the right period.

9 You can't say, well, it doesn't matter so long

10 as it's sometime, some way, somehow reported.

11 It's the matching principle.

12 Revenues and expenses, revenues need to go in

13 the period where they are earned, expenses

14 need to match those revenues. The expense is

15 needed to generate the revenues. Because

16 people are going to rely on them at a

17 particular point in time.

18 Q. So in 2003 the current period went

19 back to 1997; is that your testimony?

20 A. My testimony is that the

21 interpretation that all accounting experts

22 have of APB No. 20 is that you restate the

23 periods that are materially misstated.

24 Q. Does this say -- where does this say

25 that?

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2 MR. BRAUTIGAM: Objection.

3 Q. Where does APB 20 say what you just

4 said? Or can you point me to any place where

5 it says what you just said; when you have a

6 restatement you restate the periods that are

7 materially misstated, where does it say that?

8 MR. BRAUTIGAM: Objection.

9 A. It says -- that is the understanding

10 that all accounting experts had of paragraph

11 38.

12 Q. That's not my question. Where does

13 it say that in paragraph 38? Can you point me

14 to any line in paragraph 38 that says what you

15 just said? I don't care about understandings.

16 Where does it say that?

17 MR. BRAUTIGAM: Objection, compound.

18 A. It does not say what you think it

19 ought to say, in the words you think ought to

20 be used, but my interpretation is consistent

21 with all accounting experts. If you were to

22 read Wiley's GAAP guide or Miller's GAAP guide

23 or the other -- there's a reason these various

24 treaties exist, because some of the accounting

25 literature is difficult to understand. Unless

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2 you look at what other people who have spent

3 time reading them and interpreting them, what

4 they mean.

5 Q. Regardless of interpretations, we

6 are in agreement that that language you just

7 gave me does not appear in paragraph 38,

8 correct?

9 MR. BRAUTIGAM: Objection.

10 A. "That language" meaning the language

11 that you think ought to appear to convey the

12 concept that I think is plainly understood by

13 all accounting and auditing experts, does not

14 appear. However, it's phrased in a different

15 way that is understood to mean that materially

16 misstated financials of 1998 in 2003, you

17 discover that, you need to restate 1998.

18 Q. Let's talk about the Provident

19 restatements. Your next paragraph, paragraph

20 14, you talk about the press release, dated

21 March 5, 2003. Do you see that?

22 A. Yes.

23 Q. What was the issue that was involved

24 in that press release or issues?

25 A. Let's get that in front of us. I

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2 think that would be helpful in answering this

3 question.

4 Q. Is that one of the documents you

5 looked at?

6 A. Yes. It's an attachment to an AK.

7 Q. We will get to that. I'm looking on

8 page 2 through the materials you reviewed for

9 purposes of your testimony, and I realized

10 there were some additional things you talked

11 to me about. I do not see the March 5, 2003

12 press release listed here.

13 A. That's an oversight on my part then.

14 MR. BRAUTIGAM: It was attached to

15 the CAC, which is Exhibit B.

16 A. Oh, okay. In my item "P" I refer to

17 8Ks and PFGI from yearend 12/31/94 to the

18 quarter that ended 12/31/2004.

19 Q. If Mr. Brautigam has that document I

20 welcome him to give you to you to refresh your

21 recollection.

22 A. Actually it's not too terribly

23 important. What was said on March 5th is we

24 are restating 1997 through 2002. It showed

25 before restatement and after restatement for

<p style="text-align: right;">Page 206</p> <p>1 FUERMAN</p> <p>2 net income and earnings per share for the</p> <p>3 diluted.</p> <p>4 MR. BRAUTIGAM: Jim, I do have it</p> <p>5 so. Can I show it to him?</p> <p>6 MR. BURKE: Absolutely.</p> <p>7 A. That's the thing I focused on. It</p> <p>8 also showed "reported" versus "restated" total</p> <p>9 assets.</p> <p>10 Q. What were the reasons for the</p> <p>11 restatement, if you remember?</p> <p>12 A. The reasons were that because of</p> <p>13 mistakes in estimating and calculating the</p> <p>14 leases, beginning 1997 -- this is what the</p> <p>15 company felt the reason was and this is what</p> <p>16 they said in the press release -- that they</p> <p>17 had recognized too much net income too early</p> <p>18 and so they needed to make that change. They</p> <p>19 had misunderstood how to do the accounting for</p> <p>20 their lease transactions.</p> <p>21 Q. What lease transactions?</p> <p>22 A. Auto lease transactions.</p> <p>23 Q. So this was misstated financial</p> <p>24 estimates in the expense or the income that</p> <p>25 was being paid on the underlying leases; is</p>	<p style="text-align: right;">Page 208</p> <p>1 FUERMAN</p> <p>2 recollection?</p> <p>3 A. That's what it says in the</p> <p>4 deposition transcripts. I think it says that</p> <p>5 in the PricewaterhouseCoopers report also.</p> <p>6 Q. Your understanding as to the first</p> <p>7 restatement on March 5th, did it involve any</p> <p>8 accounting principle or any accounting</p> <p>9 concepts?</p> <p>10 A. Yes, it did.</p> <p>11 Q. Which ones?</p> <p>12 A. Well, it involved violations of the</p> <p>13 timing of recognition of revenue and expense.</p> <p>14 Q. Which ones?</p> <p>15 A. As they are interpreted by FAS 13</p> <p>16 and the subsequent regs that interpret that.</p> <p>17 Q. The leases that involve these</p> <p>18 estimates, how were these leases booked on</p> <p>19 Provident's books prior to March 5, 2003, if</p> <p>20 you know?</p> <p>21 A. I don't know. I do not purport to</p> <p>22 be an expert in lease accounting. It's a very</p> <p>23 complex area.</p> <p>24 Q. So in terms of the technical details</p> <p>25 of exactly what the accounting was, as it</p>
<p style="text-align: right;">Page 207</p> <p>1 FUERMAN</p> <p>2 that your understanding?</p> <p>3 A. Not the cash payments made by the</p> <p>4 underlying leases by the people who drove the</p> <p>5 cars around, but when you have a lease</p> <p>6 transaction, like Provident had, you have to</p> <p>7 make -- unless it's a very simple lease, and</p> <p>8 these were not simple leases, you have to do</p> <p>9 some fairly complex estimates of what will be</p> <p>10 the future revenue and expense associated with</p> <p>11 these leases in the aggregate.</p> <p>12 They miscalculated that. I mean</p> <p>13 there are things they have to estimate, future</p> <p>14 events, things like what is the market for the</p> <p>15 cars going to be at some point in the future.</p> <p>16 Are these cars that will be used cars X number</p> <p>17 of years in the future.</p> <p>18 You know, and how does that</p> <p>19 impact -- this impacted the early buyout</p> <p>20 option, that had an impact on that, although</p> <p>21 that was the April 15, 2003 announcement that</p> <p>22 discussed that.</p> <p>23 Q. You thought the EBO, or early</p> <p>24 bailout option, was indicated in the</p> <p>25 April 15th announcement; is that your</p>	<p style="text-align: right;">Page 209</p> <p>1 FUERMAN</p> <p>2 relates to the first restatement, that's not</p> <p>3 something that you are an expert in?</p> <p>4 A. No. I have the threshold knowledge</p> <p>5 in leases, but the kind of lease accounting</p> <p>6 that was done at Provident and other banks</p> <p>7 with securitizations is not an accounting area</p> <p>8 that I'm an expert on.</p> <p>9 Q. Other than what you've told me</p> <p>10 already, do you have any further understanding</p> <p>11 of what the issues were in connection with the</p> <p>12 March 5, 2003 announcement?</p> <p>13 A. That is really it. I mean I could</p> <p>14 speculate as to different details.</p> <p>15 Q. No, I'm just asking for your best</p> <p>16 recollection.</p> <p>17 A. No, that's it.</p> <p>18 Q. Your paragraph 14 of your report,</p> <p>19 the last full paragraph states, "The company</p> <p>20 disclosed in its April 15, 2003 filings that</p> <p>21 the amount of restatement was much larger,</p> <p>22 that the accounting problems were of greater</p> <p>23 depth and breath that the company initially</p> <p>24 disclosed on March 5, 2003."</p> <p>25 What does that mean?</p>

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2 A. What it means is that the

3 restatement was felt to be 44 million I

4 believe, if my recollection is correct, 44

5 million on March 5th and then additional 70

6 million April the 15th, reduction in net

7 income I believe it was.

8 Then corresponding reduction in

9 earnings per share. So it was greater an

10 amount and greater in depth and breath in that

11 PricewaterhouseCoopers determined that the

12 problems went back to 1994. They didn't start

13 in 1997, they started in 1994.

14 Q. What was the specific accounting

15 issue that required the second announcement on

16 April 15, 2003; what was the technical

17 accounting issue?

18 A. The issue, again, I don't know all

19 the technical details, but it had something to

20 do with the residual value insurance. That

21 this had some impact on the accounting

22 treatment because it was not the kind of

23 residual value insurance that should have been

24 in hindsight, therefore, an accounting

25 treatment different than what was used was

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2 used.

3 The company seemed to be confused

4 about how it should have handled the residual

5 value insurance, if it wanted to have the

6 accounting treatment that it wanted to have.

7 Or put another way, if they wanted to use that

8 particular residual value insurance they

9 should have had a different accounting

10 treatment.

11 Q. Beyond that general understanding,

12 do you have any knowledge of the specific

13 accounting issues involved?

14 A. This had some impact on the early

15 buyout option I believe, and.

16 Q. April 15th had something to do with

17 the early buyout option?

18 A. I seem to recall that from the

19 PricewaterhouseCoopers report.

20 Q. Beyond, again, what you already told

21 me, any further understanding of the specific

22 accounting issues involved on the April 15th

23 announcement?

24 A. No.

25 Q. Paragraph 15, the third line down in

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2 the middle of the sentence you are talking

3 about Provident here, and it says, "It had

4 unstated its lease liabilities, which should

5 have been placed on the balance sheet instead

6 of off the balance sheet." Do you see that?

7 A. Yes.

8 Q. What's the basis for that statement?

9 A. The basis is that in the press

10 release attached -- actually, maybe it's not

11 in the press release, maybe it's in the 10K --

12 it shows that their lease liabilities as

13 restated were greater than as reported, which

14 indicates that it should of had more

15 liabilities on the balance sheet than it had

16 originally reported.

17 Q. So you believe this was a balance

18 sheet issue, not an income statement issue?

19 A. It was an issue of both the income

20 statement and the balance sheet, however, the

21 income statement is the thing that I focus on

22 in my report, because that's what APB No. 20

23 seems to focus on.

24 Q. Is this balance sheet issue which

25 you refer to her a focus of your option; is

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2 that something you are opining on or is it

3 not?

4 A. I could have opined on it. As a

5 general principle financial statement

6 analysis, all things being equal, as the

7 company's liabilities increase certainly as

8 its debt equity ratio increases or other kinds

9 of leverage ratios, that's a negative for a

10 company's credit rating.

11 Q. I guess my question is, do you

12 understand the specifics in the details of

13 this on-balance sheet, off-balance sheet issue

14 you are referring to in this portion of your

15 report, what really was going on at Provident?

16 A. What was the underlying mistake in

17 the accounting?

18 Q. Or the accounting issue? Was it

19 just an accounting interpretation, was it a

20 mathematical error, was it a change in

21 accounting principle, what happened as you

22 understand it?

23 MR. BRAUTIGAM: I object to all of

24 those questions.

25 A. I think there's a little bit of



<p style="text-align: right;">Page 214</p> <p>1 FUERMAN</p> <p>2 both. There was some misestimating, some</p> <p>3 miscalculating or misinterpreting what the</p> <p>4 correct accounting treatment was. There's</p> <p>5 some reference in a couple of the deposition</p> <p>6 transcripts of Hoverson and Cooke, I believe,</p> <p>7 that Ernst and Young was involved from the</p> <p>8 beginning in structuring the transactions, to</p> <p>9 obtain the proper accounting treatment.</p> <p>10 Which if that is true, then you</p> <p>11 could say, well, the transactions were not</p> <p>12 structured properly, and there were</p> <p>13 miscalculations, misestimates in doing the</p> <p>14 transactions. Or you could say the accounting</p> <p>15 treatment of these transactions as they were</p> <p>16 structured was incorrect.</p> <p>17 It's kind of a packaged deal. The</p> <p>18 way the transactions were done and the way the</p> <p>19 accounting for the transactions was done seems</p> <p>20 to have been done concurrently. I mean at</p> <p>21 least there seems to be some concurrent</p> <p>22 activity.</p> <p>23 Q. I apologize if I'm missing you on</p> <p>24 this. As to what accounting issues dealt with</p> <p>25 on-balance sheet versus off-balance sheet</p>	<p style="text-align: right;">Page 216</p> <p>1 FUERMAN</p> <p>2 still a defendant?</p> <p>3 A. I'm not certain. I know there's</p> <p>4 been a judicial opinion where there was a</p> <p>5 dismissal. We talked about this before lunch,</p> <p>6 whether it was a dismissal in whole or in</p> <p>7 part, and if there is a pending appeal.</p> <p>8 I frankly haven't paid much</p> <p>9 attention to this. I'm focusing on the</p> <p>10 accounting issues.</p> <p>11 Q. That's fine. That was we were</p> <p>12 talking about the other restatement litigation</p> <p>13 and that's the opinion.</p> <p>14 Have you seen an opinion in the</p> <p>15 Thiernann case in which Ernst and Young was</p> <p>16 dismissed as a defendant?</p> <p>17 A. I probably saw it, but I can't</p> <p>18 remember it in any detail. I mean, I don't</p> <p>19 really know for sure. I know I've seen at</p> <p>20 least one or two judicial opinions.</p> <p>21 I can't even remember if they were</p> <p>22 by Judge Beckwith or Judge Spiegel, for</p> <p>23 example.</p> <p>24 Q. Next page, page 8 of your report.</p> <p>25 The last sentence in that carryover section,</p>
<p style="text-align: right;">Page 215</p> <p>1 FUERMAN</p> <p>2 versus something else, are you aware of the</p> <p>3 specific accounting issues that were involved</p> <p>4 as you refer to it here, on this sentence</p> <p>5 which talks about whether lease liability</p> <p>6 should have been on the balance sheet or off</p> <p>7 the balance sheet?</p> <p>8 MR. BRAUTIGAM: Objection to the</p> <p>9 form.</p> <p>10 A. Beyond what I've already said, that</p> <p>11 FAS 13 as interpreted was not correctly</p> <p>12 followed, no, I can't go into any greater</p> <p>13 detail than that.</p> <p>14 Q. That's fair enough. I know that one</p> <p>15 of your specialties that you've described</p> <p>16 earlier today is when auditors get involved in</p> <p>17 securities litigation.</p> <p>18 A. Certainly.</p> <p>19 Q. You are aware from a class action</p> <p>20 complaint that Ernst and Young was a defendant</p> <p>21 in this case?</p> <p>22 A. That is correct.</p> <p>23 Q. Or was named as a defendant?</p> <p>24 A. That is correct.</p> <p>25 Q. Do you know whether or not they are</p>	<p style="text-align: right;">Page 217</p> <p>1 FUERMAN</p> <p>2 section 15. "PFGI accounted for the 1994,</p> <p>3 1995 and 1996 changes with a current approach</p> <p>4 and not with a retroactive approach."</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Earlier we were talking about</p> <p>7 APB 20 where it talked about current period.</p> <p>8 I thought I understood you to say that if</p> <p>9 there is a restatement the prior periods have</p> <p>10 to be restated, you can't do it currently?</p> <p>11 A. Right.</p> <p>12 Q. Isn't this inconsistent with that?</p> <p>13 A. It is my opinion that there was not</p> <p>14 a restatement of '94, '95 and '96 as</p> <p>15 understood under APB No. 20. Now, in the</p> <p>16 financial press and in at least one of the</p> <p>17 PFGI press releases itself, I believe it may</p> <p>18 have used the phrase that it was restating all</p> <p>19 the way back to 1994.</p> <p>20 That difference between the</p> <p>21 financial press, how it uses the term and how</p> <p>22 the accounting literature uses it is, well, it</p> <p>23 is what it is. The accounting literature</p> <p>24 would say that '94, '95 and '96 were not</p> <p>25 restated, you know, an cumulative adjustment</p>

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2 approach was used. "Retroactive" meaning a

3 restatement is what was used for '97, '98,

4 '99, 2000 and 2001.

5 Q. Based upon your review of the

6 accounting literature your view is that 1994,

7 1995, 1996 were not restated?

8 A. That is my view of the way the

9 accounting literature characterizes '94, '95,

10 '96.

11 Q. Those were dealt with in the current

12 period which would have been 2002?

13 A. Yes.

14 Q. The next paragraph 16. APB 20

15 defines the restatement by PFGI of its 1997,

16 1998, 1999, 2000 and 2001 financial statements

17 as a clear unequivocal, unambiguous,

18 incontrovertible and undeniable to assertion

19 by the management of PFGI that its 1997

20 financial statements when originally issued

21 were materially misstated. It says the same

22 language for 1998, 1999, 2000 and 2001.

23 Do you see that?

24 A. That is correct.

25 Q. That is paragraph 16 of Plaintiffs'

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1 FUERMAN

2 Exhibit 115. Show me where APB 20 says that?

3 A. In the middle of paragraph 38 it

4 says, "If a change or correction has a

5 material affect on income before extraordinary

6 items or on net income of the current period

7 before the affect of the change, the

8 treatments and disclosures described in this

9 opinion should be followed."

10 That's the standard. If it has a

11 material affect on income, well, I don't think

12 there was income before extraordinary items in

13 PFGI. But if it has a material affect on net

14 income then you are to restate.

15 Q. Okay. Is there any language in that

16 intersection of APB No. 20, section 38, that

17 uses the words "clear, unequivocal and

18 unambiguous, incontrovertible and undeniable

19 assertion by management that financial

20 statements of each period to which a

21 restatement relates was materially misstated

22 when originally issued"?

23 A. That is the philosophy of APB 20.

24 Those exact words are not used.

25 Q. Okay, that's my question. Are those

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1 FUERMAN

2 exact words that appear in this paragraph used

3 anywhere in APB No. 20?

4 A. Those exact words are not used, but

5 those exact couldn't concepts permeate APB 20.

6 That's how APB No. 20 is understood by all

7 people in accounting who have done research on

8 restatements, who have cited my work or who I

9 have cited. There's just no dispute on this.

10 Q. Can you show me anywhere in APB 20

11 that says if an error, an cumulative error, is

12 determined and that error relates to prior

13 periods and you restate those prior periods,

14 that by definition every single one of those

15 prior periods is materially misstated; can you

16 show me that in APB 20?

17 A. That language is not there, but that

18 concept, that idea, that thought permeates APB

19 20 as interpreted by all the people in

20 accounting, in auditing who have written on

21 this subject.

22 Q. But that language is not in there,

23 is it?

24 MR. BRAUTIGAM: Objection.

25 A. That language is not in there.

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1 FUERMAN

2 Q. Thank you. Paragraph 17. You talk

3 about APB No. 20 requiring before and after

4 disclosure for each restated period?

5 A. Yes.

6 Q. We looked at it before, but where is

7 the before and after disclosure section of

8 APB No. 20? You showed it to me earlier.

9 A. I think it's paragraph 37, yes,

10 paragraph 37.

11 Q. This also talks about being

12 disclosed in the period in which the error was

13 discovered and corrected, in other words,

14 should be disclosed in the period in which the

15 error was discovered and corrected. Do you

16 see that?

17 A. That is interpreted as the period to

18 which the error belongs. I think it's

19 unartfully phrased. An English major clearly

20 did not write this. That's how it is

21 interpreted in all the accounting and auditing

22 leading authorities.

23 Q. So the language disclosed in the

24 period in which the error was discovered and

25 corrected you say means in a prior period to



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2 which it relates?

3 A. That is correct.

4 Q. Page 9, you indicated that PFGI did

5 not provide the required disclosure for the

6 yearend December 31, 1997?

7 A. That is right.

8 Q. Okay. What is the basis for your

9 opinion that there was requirement of

10 disclosure with respect to 1997?

11 A. The extant accounting policy of PFGI

12 was to provide six years of prior data in its

13 selected financial data section of its 10K.

14 That was changed beginning with the yearend

15 12/31/2002 down to five years. That way they

16 lopped off full disclosure of '97 after

17 restatement.

18 So we know we do have -- there is

19 full disclosure after restatement compared to

20 as originally reported for 12/31/98 and '99,

21 2000 and 2001, but not for '97.

22 Q. Do you know what the 10K rules are,

23 for what periods need to be disclosed in

24 financials?

25 A. The current year, plus four prior

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1 FUERMAN

2 years, total of five years.

3 Q. Five years?

4 A. Right. It's voluntary to supply

5 even farther back information, and PFGI changed

6 its prior accounting from the current year,

7 plus five years back for yearend 12/31/2001.

8 Suddenly in 12/31/2002 they shift to the prior

9 year, plus only four years prior.

10 Q. Which is all that the 10K rules

11 require, right?

12 A. That is all that 10K rules require,

13 but it leads any reasonable accounting expert

14 to ask the question why was the accounting

15 policy changed in such a propitious moment.

16 Q. It's a voluntary disclosure to do it

17 beyond five years, correct, there's no

18 requirement to do it beyond five years; is

19 that right?

20 MR. BRAUTIGAM: Objection.

21 A. No, that's not right. The general

22 requirement is full and fair disclosure to the

23 investor. And that's what needed to be

24 provided by going five years back, not just

25 four years back in this situation.

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1 FUERMAN

2 Q. What accounting principle requires

3 full and fair disclosure, or are we in the law

4 now?

5 A. It's a crossover between the two.

6 Q. I see.

7 A. I mean, the SEC issues staff

8 accounting bulletins, for example. Seriously,

9 the accounting literature has similar

10 sentiments in it.

11 If you look at the statements in

12 financial accounting concepts there's similar

13 sentiments to the SEC's mantra of full and

14 fair disclosure. I can't come up with the

15 exact words right now but something similar.

16 Q. You are not an SEC expert?

17 A. I am not an SEC expert.

18 Q. Paragraph 18.

19 A. Yes.

20 Q. Second sentence, and to the extent

21 I'm reploting old ground just tell me if your

22 answer to the prior questions are the same.

23 You state here that "A restatement of

24 previously issued audited annual financial

25 statements constitutes an admission by the

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1 FUERMAN

2 management of the company that each and every

3 one of the previously issued audited financial

4 statements was material any misstated."

5 MR. BRAUTIGAM: I object on the

6 grounds that that's not the second

7 sentence.

8 MR. BURKE: That's the third

9 sentence. I stand corrected.

10 Q. Do you see where I am?

11 A. Yes, I do see where you are.

12 Q. What in the accounting literature

13 that you are familiar with is the basis for

14 that statement, if it's anything other than

15 what we talked about before? If it's the same

16 that's fine.

17 A. APB 20.

18 Q. Paragraph 38.

19 A. APB 20 has to be, you know -- it's

20 like kids, sometimes all they want to eat is

21 dessert. You have to eat the vegetables and

22 meat too. You have to look at the whole APB

23 20.

24 Q. I mean, and take your time, find me

25 anywhere in APB 20 where the language that you

<p style="text-align: right;">Page 226</p> <p>1 FUERMAN</p> <p>2 use in this expert report, that "A restatement</p> <p>3 constitutes an admission by management of the</p> <p>4 company that each and every one of the</p> <p>5 previously issued audited financial statements</p> <p>6 was materially misstated," show me where that</p> <p>7 appears anywhere in that APB?</p> <p>8 A. In paragraph 14, it begins with</p> <p>9 paragraph A and ends with paragraph D. Over</p> <p>10 and over again the authors of APB 20 say we</p> <p>11 are in general opposed to restatements because</p> <p>12 we believe consistency is such an important</p> <p>13 value in financial reporting. If you read</p> <p>14 those four paragraphs, I could read them into</p> <p>15 the record, but I don't see that serves a</p> <p>16 purpose.</p> <p>17 Q. It will be attached to the exhibit.</p> <p>18 A. You read how the board approached</p> <p>19 this general dilemma of they love consistency,</p> <p>20 but they love correct financial reporting.</p> <p>21 How do we resolve the problem of what do we do</p> <p>22 when we discover an error that occurred two,</p> <p>23 three, four years ago?</p> <p>24 They come out on the side of in</p> <p>25 general coming up with very few situations</p>	<p style="text-align: right;">Page 228</p> <p>1 FUERMAN</p> <p>2 materially misstated.</p> <p>3 They give a couple other examples in</p> <p>4 APB 20. For example, if after the period,</p> <p>5 after the fiscal period there was a pooling of</p> <p>6 interest merger, -those have gone out of</p> <p>7 existence now, but they used to be very</p> <p>8 popular -- then there needs to be a</p> <p>9 restatement.</p> <p>10 Nobody regards that as indicative of</p> <p>11 the originally issued financials being</p> <p>12 materially misstated. Also, nobody regards it</p> <p>13 as a sin if the financials get restated</p> <p>14 because a new pronouncement by the financial</p> <p>15 accounting standards board comes out and</p> <p>16 specifically says that you need to restate</p> <p>17 prior to this particular FASB.</p> <p>18 Sometimes they got out with that</p> <p>19 specific language and instruction. Also, if a</p> <p>20 new statement of position is issued by the</p> <p>21 emerging issues tasks force, nobody regards --</p> <p>22 they rarely, people rarely regard that as</p> <p>23 indicating that the originally issued</p> <p>24 financials are materially misstated.</p> <p>25 Perhaps a gray area, but a lot of</p>
<p style="text-align: right;">Page 227</p> <p>1 FUERMAN</p> <p>2 where there should be restatement. They say</p> <p>3 only if there was an error, only in a couple</p> <p>4 of other situations. For example, paragraph</p> <p>5 27 says you should apply retroactively the new</p> <p>6 method in restatements of prior periods if</p> <p>7 there is, A, a change from the LIFO method of</p> <p>8 inventory pricing to another, L-I-F-O.</p> <p>9 B, a change in the method of</p> <p>10 accounting for long-term construction</p> <p>11 contracts. And C, a change to or from the</p> <p>12 full cost method of accounting which is used</p> <p>13 in the extracted industries. Those are the</p> <p>14 only thing non-correction of an error type of</p> <p>15 accounting changes that they want to see</p> <p>16 handled with restatement, indicating that you</p> <p>17 should be very cautious against restatement.</p> <p>18 And if you do, you are asserting</p> <p>19 that the prior statements were materially</p> <p>20 misstated, unless it falls into one of these</p> <p>21 exceptions. For example, changing from LIFO</p> <p>22 FIFO, for example. Now, those kinds of</p> <p>23 changes, changing from LIFO to FIFO, nobody</p> <p>24 reasonably regards that as indicative of the</p> <p>25 original reporting, financial reporting being</p>	<p style="text-align: right;">Page 229</p> <p>1 FUERMAN</p> <p>2 people don't regard it as indicative of the</p> <p>3 originally issued financials being materially</p> <p>4 misstated is if a new staff accounting</p> <p>5 bulletin is put out by the SEC. It's a little</p> <p>6 bit of a gray area because some people say</p> <p>7 that's not really a new GAAP pronounce. It's</p> <p>8 just the SEC emphasizing that this is what</p> <p>9 GAAP has already been.</p> <p>10 People argue about that. But</p> <p>11 clearly as in the case of Provident where</p> <p>12 there's no -- there's no way you could claim</p> <p>13 you are going from good GAAP to good GAAP.</p> <p>14 You are going from incorrect violation of GAAP</p> <p>15 to good GAAP when you make the announcement</p> <p>16 March 5, 2003, April 15, 2003.</p> <p>17 Definitely that is regarded as an</p> <p>18 admission by management, the originally issued</p> <p>19 financials were materially misstated. Now</p> <p>20 some people will go further and they will</p> <p>21 argue, I've seen this, they will immediately</p> <p>22 accuse the auditors of having conducted a</p> <p>23 failed audit.</p> <p>24 I don't take that position. I think</p> <p>25 I'm a very reasonable and middle of the road</p>

58 (Pages 226 to 229)

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2 in my interpretations of these things.

3 Q. Okay. My question is a simple one.

4 Can you point me to anywhere in any paragraph

5 of APB 20, I understand your interpretation

6 and philosophy, can you point me to anywhere

7 in APB 20 where it says a restatement of

8 previously issued audited financial statements

9 constitutes an admission by the management of

10 the company, each and every one of the

11 previously issued audited financial statements

12 was materially misstated?

13 MR. BRAUTIGAM: Objection.

14 A. Those words are not there because

15 this is that is not the intention of APB 20.

16 The intention of APB 20 is to tell companies

17 how they are supposed to do their accounting.

18 Q. Those words do not appear?

19 A. Those words do not appear.

20 Q. Thank you. Paragraph 19.

21 MR. BRAUTIGAM: Jim, would this be a

22 convenient time for a break?

23 MR. BURKE: Now is a fine time to

24 break.

25 (Recess taken.)

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2 Q. Paragraph 19. Paragraph 19 is under

3 the heading "the Attitudes of the CFO, CEO and

4 Audit Committee Towards APB 20," correct?

5 A. That is correct.

6 Q. The second paragraph of paragraph 19

7 states, "The purpose of this discussion is to

8 develop insight into some of the people

9 responsible for the financial reporting of

10 PFGI," correct?

11 A. Yes.

12 Q. Other than reading the definitions

13 that are listed in your report, you have no

14 knowledge, never met, have no exposure to any

15 of these individuals, correct?

16 A. The only one I'd even heard of was

17 Dr. Stager who was present at the University

18 of Cincinnati when I was a graduate student

19 there, and I never met him.

20 MR. BRAUTIGAM: I have a point of

21 clarification. When you say read in

22 deposition transcripts, do you include

23 things like PFGI board minutes or memos,

24 things like that or?

25 MR. BURKE: What he's looked at?

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2 Q. You never met any of these people?

3 A. No.

4 Q. You have no knowledge of their

5 background other than is reflected in the

6 depositions?

7 A. No, I do not.

8 Q. Do you consider yourself an expert

9 on developing insight into people?

10 A. Yes.

11 Q. What's the basis for that?

12 A. I'm a certified fraud examiner.

13 Q. You've been a certified fraud

14 examiner since 1999?

15 A. That's correct.

16 Q. You've done one fraud?

17 A. That's correct.

18 Q. You believe that gives you the

19 ability to determine whether people are

20 telling the truth or not; is that correct?

21 A. My total knowledge and experience of

22 fraud examination, in forensic accounting, I

23 believe gives me the ability to opine

24 meaningfully on insights from what people say

25 in interviews and in depositions, yes.

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1 FUERMAN

2 Q. Are you aware of -- have you ever

3 been qualified as an expert to whether people

4 are telling the truth or not based upon what

5 you read in a deposition?

6 MR. BRAUTIGAM: Objection.

7 A. No. As I state at the beginning of

8 the deposition, I have not been qualified as

9 an expert by any court.

10 Q. Can you point me to any materials in

11 the curriculum or in the body of work of the

12 certified fraud examiners to say it's

13 permissible to read a deposition and determine

14 whether someone is lying or not lying?

15 A. There are many pages devoted to this

16 topic in the fraud examiners' manual, which is

17 the main basis of the certified fraud

18 examiners' test that I passed in 1999 on

19 interviewing and interrogation techniques, and

20 how to gage the truthfulness of people being

21 interviewed or interrogated.

22 Most of the contexts that are

23 discussed, most of the examples, are of law

24 enforcement or security officials interviewing

25 people suspected of something. But these same

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2 principles I believe would carry over into a

3 deposition transcript. I've also taught since

4 year 2000 a chapter -- we devote one week each

5 semester to the discussion of interviews and

6 interrogations, and we view a video called

7 Beyond The Numbers, narrated by Joseph Wells

8 and produced by Associations of Certified

9 Fraud Examiners that gives instructions on how

10 to detect whether people are telling the truth

11 or not.

12 It's called statement analysis. I

13 also took a workshop this summer put on by

14 PricewaterhouseCoopers where they had experts

15 come in who are specially trained and

16 recognized as being experts in this, who have

17 worked as consultants not only for

18 PricewaterhouseCoopers, but also for the CIA

19 and the Army.

20 I learned additional techniques

21 about detection of deception. I will make a

22 caveat that I did not have a chance to observe

23 the body language and breathing patterns and

24 eye movements and things of that nature that

25 can be helpful, so I don't have a sense of the

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2 non-verbal communication of the people who

3 were deposed, which I regard as kind of an

4 interview. But nonetheless, I feel I can make

5 some -- I can come up with some reasonably

6 based opinions based on reading of the

7 transcript.

8 Q. The Fraud Examiners' Manual talks

9 about interviewing and interrogation

10 techniques?

11 A. That is correct.

12 Q. That's in person, correct?

13 A. I think all of these materials,

14 whether it's materials by the Association of

15 Certified Fraud Examiners or

16 PricewaterhouseCoopers, acknowledges that one

17 can be more effective at this if one is able

18 to observe the non-verbal behavior of the

19 subject that you are interested in analyzing.

20 There's no question about that.

21 Q. All those materials you talked about

22 dealt with personal interviews and personal

23 interrogations of individuals, did they not?

24 A. That's true.

25 MR. BRAUTIGAM: Objection.

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2 Q. Is that true?

3 A. That is true, but these were not

4 just videos. There were also transcripts that

5 were studies as part of these courses too.

6 The transcripts are regarded as potentially

7 very valuable and very insightful.

8 Q. Were you ever in the CIA?

9 A. No.

10 Q. Were you ever in the Army?

11 A. No.

12 Q. Did you ever interview or

13 interrogate anybody?

14 A. No.

15 Q. Were you ever in law enforcement?

16 MR. BRAUTIGAM: Objection.

17 A. No.

18 Q. Were you ever a security official?

19 A. No.

20 Q. How long was your PWC Training

21 Program?

22 A. Four days.

23 Q. Where was that?

24 A. It was in a small town near

25 Princeton, New Jersey. It was a workshop put

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2 on by PricewaterhouseCoopers for about 350

3 accounting professors across the

4 United States.

5 Q. In the Fraud Examiners' Manual or

6 any other material you've studied, is there a

7 chapter or something that deals with how you

8 read a transcript alone and determine the

9 truthfulness or lack of truthfulness of a

10 person you've never seen before?

11 MR. BRAUTIGAM: Objection.

12 A. There's not a chapter on that, and

13 there's also not a chapter on what to do if

14 they are wearing a blue shirt instead of a

15 white shirt. It's very clear in these courses

16 that these principles generally can be applied

17 to transcripts, though certainly not nearly as

18 effectively as if you had the chance to view

19 video of the person.

20 Q. In all of your research into

21 securities litigation and securities class

22 actions, are you aware of any case in which

23 someone who claimed to be a certified fraud

24 examiner, justified as to whether or not a

25 deposition transcript was true or untrue based

<p style="text-align: right;">Page 238</p> <p>1 FUERMAN</p> <p>2 upon the reading of that transcript after the</p> <p>3 fact?</p> <p>4 MR. BRAUTIGAM: Objection.</p> <p>5 A. No, I'm not aware as to what other</p> <p>6 expert witnesses have testified in prior court</p> <p>7 proceedings. This is my first expert witness</p> <p>8 assignment.</p> <p>9 Q. In your certified fraud examiner</p> <p>10 training, did they ever give you any examples</p> <p>11 of situations where that occurred?</p> <p>12 A. Where?</p> <p>13 Q. Someone was qualified as an expert</p> <p>14 to walk in and read a deposition transcript</p> <p>15 and determine credibility or lack of</p> <p>16 credibility?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 A. There's the implicit acknowledgment</p> <p>19 that that is feasible, and if you like I can</p> <p>20 send you a copy of these materials by the</p> <p>21 Association of Certified Fraud Examiners video</p> <p>22 and workbook called "Beyond the Numbers."</p> <p>23 Q. That would be fine. If you would</p> <p>24 supply that to Mr. Brautigam I would</p> <p>25 appreciate that.</p>	<p style="text-align: right;">Page 240</p> <p>1 FUERMAN</p> <p>2 A. The basis is circumstantial</p> <p>3 evidence. I infer from his stating things</p> <p>4 that are clearly incorrect, that clearly a</p> <p>5 person of his knowledge and stature in</p> <p>6 financial accounting, having been the CFO of a</p> <p>7 major publicly held company, it's to me</p> <p>8 inconceivable that his saying what he did was</p> <p>9 a boo-boo. It just seems to me it was</p> <p>10 intentional.</p> <p>11 Q. Are you saying he said what he did</p> <p>12 was a "boo-boo"?</p> <p>13 A. We're being facetious here.</p> <p>14 MR. BRAUTIGAM: Objection. You've</p> <p>15 interrupted the witness. Please let him</p> <p>16 finish.</p> <p>17 A. What he said, it seems inconceivable</p> <p>18 that it could be inadvertent. That a person</p> <p>19 of his knowledge and stature, who gives such a</p> <p>20 blatantly incorrect interpretation of</p> <p>21 APB No. 20, it just seems inconceivable that</p> <p>22 that was an innocent mistake.</p> <p>23 Q. So you are opining on his intent and</p> <p>24 you believe you are qualified to do that; is</p> <p>25 that right?</p>
<p style="text-align: right;">Page 239</p> <p>1 FUERMAN</p> <p>2 MR. BRAUTIGAM: I'll write it down.</p> <p>3 A. Are you taking a note of that?</p> <p>4 Thank you.</p> <p>5 Q. Paragraph 21. The middle of that</p> <p>6 paragraph talks about the assertion by</p> <p>7 management of material misstatement of each of</p> <p>8 the restated periods. We covered that point</p> <p>9 before?</p> <p>10 A. That is correct.</p> <p>11 Q. I take it you are not a</p> <p>12 psychologist?</p> <p>13 A. No, I am not.</p> <p>14 Q. I'm not being facetious, but you are</p> <p>15 not clairvoyant or a mind reader, are you</p> <p>16 A. I have a number of degrees, but not</p> <p>17 in that field.</p> <p>18 Q. Not in mind reading?</p> <p>19 A. Yeah.</p> <p>20 Q. You state here that "In my opinion,</p> <p>21 the CFO -- this is the last sentence of</p> <p>22 paragraph 21, "intentionally misstated his</p> <p>23 personal knowledge and belief about</p> <p>24 restatements of materiality." What's the</p> <p>25 basis for that?</p>	<p style="text-align: right;">Page 241</p> <p>1 FUERMAN</p> <p>2 MR. BRAUTIGAM: Objection.</p> <p>3 A. I'm opining on -- well, yes, I am</p> <p>4 opining on his intent. I mean, there are</p> <p>5 three kinds of statements. There are true</p> <p>6 statements, there are false statements due to</p> <p>7 mistake and false statements that are</p> <p>8 intentionally false.</p> <p>9 I am not eager to say that about</p> <p>10 this person, but it just seems obvious to me</p> <p>11 from reading the deposition transcript.</p> <p>12 Q. Where do you come up with the basis</p> <p>13 there are three types of statements?</p> <p>14 A. That just seems to me logical.</p> <p>15 Q. There's no basis for that in the</p> <p>16 certified fraud examiner manual or anything</p> <p>17 like that?</p> <p>18 A. That's just logic and common sense.</p> <p>19 Q. Your own subjective judgements?</p> <p>20 A. My own subjective judgment.</p> <p>21 Q. Obviously you've never been the CFO</p> <p>22 of a public company?</p> <p>23 A. I have never been a CFO of a public</p> <p>24 company.</p> <p>25 Q. The next page, page 11, there's a</p>

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<p style="text-align: right;">Page 242</p> <p>1 FUERMAN</p> <p>2 description of the Wells Fargo situation.</p> <p>3 A. Yes.</p> <p>4 Q. What do you understand about the</p> <p>5 Wells Fargo situation?</p> <p>6 MR. BRAUTIGAM: Objection,</p> <p>7 overbroad.</p> <p>8 A. Well, what I understand about</p> <p>9 Wells Fargo that seems relevant to the</p> <p>10 question of whether the financials were</p> <p>11 materially misstated, is that in response to</p> <p>12 an announcement by the SEC observer, or put in</p> <p>13 other words, in response to an action by the</p> <p>14 SEC which is like the promulgation of a new</p> <p>15 FASB or a new statement of position by the</p> <p>16 emerging issuance task force, that is why</p> <p>17 Wells Fargo restated.</p> <p>18 It wasn't like Provident where</p> <p>19 Provident clearly went from using accounting</p> <p>20 that was in violation of GAAP to accounting</p> <p>21 that conformed to GAAP. Wells Fargo, you</p> <p>22 could argue whether or not their original</p> <p>23 accounting was good GAAP or in violation of</p> <p>24 GAAP.</p> <p>25 Whenever a new FASB comes out, a new</p>	<p style="text-align: right;">Page 244</p> <p>1 FUERMAN</p> <p>2 substance of the SEC observer announcement,</p> <p>3 other than it had to do with lessors</p> <p>4 application in paragraphs 5J and 7D of FASB</p> <p>5 statement number 13 of accounting for leases,</p> <p>6 to arranging third-party guarantees with</p> <p>7 respect to residual value of the lease</p> <p>8 property.</p> <p>9 But having said that, the point is</p> <p>10 that whether we are talking about a</p> <p>11 manufacturing company, a services company, a</p> <p>12 bank, an insurance company, whatever kind of</p> <p>13 company, when it restates in response to an</p> <p>14 announcement by the SEC observer or the new</p> <p>15 SOP or a new FASB or a new FAB, that makes the</p> <p>16 original financial reporting maybe just fine,</p> <p>17 maybe no problem.</p> <p>18 But if you don't have that in the</p> <p>19 fact pattern that clearly indicates the</p> <p>20 original financial reporting did violate GAAP.</p> <p>21 Q. Did you understand that emerging</p> <p>22 issues task force dealt with the precise RVI</p> <p>23 issue that lead to Provident's second</p> <p>24 restatement, did you know that?</p> <p>25 A. It's not important --</p>
<p style="text-align: right;">Page 243</p> <p>1 FUERMAN</p> <p>2 statement of position, a new pronouncement by</p> <p>3 the staff, a staff accounting bulletin, a new</p> <p>4 announcement by the SEC observer, that throws</p> <p>5 into question whether the prior financials</p> <p>6 were materially misstated. In fact, a lot of</p> <p>7 reasonable people would say they clearly were</p> <p>8 not materially misstated in that fact</p> <p>9 paragraph.</p> <p>10 You have a different fact paragraph</p> <p>11 with Provident. There was no such issuance of</p> <p>12 a new FASB or SOP or anything.</p> <p>13 Q. Do you know if that emergence</p> <p>14 issuance task force bulletin related to?</p> <p>15 A. It had to do with lease accounting.</p> <p>16 Q. What aspect of lease account does it</p> <p>17 relate to?</p> <p>18 A. It doesn't matter whether it relates</p> <p>19 to --</p> <p>20 Q. My question is did you know?</p> <p>21 MR. BRAUTIGAM: Objection. You</p> <p>22 should not interrupt the witness.</p> <p>23 Dr. Fuerman, you can answer the question.</p> <p>24 A. I'll answer your question, but then</p> <p>25 I'll continue. I know little about the</p>	<p style="text-align: right;">Page 245</p> <p>1 FUERMAN</p> <p>2 Q. My question is did you know that?</p> <p>3 MR. BRAUTIGAM: Mr. Fuerman, you can</p> <p>4 continue. He should not interrupt you.</p> <p>5 You can continue.</p> <p>6 Q. I'd like a yes or no if you can give</p> <p>7 it to me.</p> <p>8 A. It's true both concerned the</p> <p>9 residual value insurance, both Wells Fargo and</p> <p>10 PFGI. But the substantive difference is that</p> <p>11 when the SEC observer comes out with an</p> <p>12 announcement that's like a new SOP or a new</p> <p>13 FASB -- and there was no such announcement</p> <p>14 with PFGI. PFGI on its own accord did a</p> <p>15 restatement.</p> <p>16 Q. Do you understand -- did you read</p> <p>17 the emerging task force bulletin?</p> <p>18 A. Yes, I did.</p> <p>19 Q. So you know it related to RVI</p> <p>20 insurance?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know that the source of that</p> <p>23 task force bulletin was PricewaterhouseCoopers</p> <p>24 and Provident, are you aware that's where it</p> <p>25 came from?</p>

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<p style="text-align: right;">Page 246</p> <p>1 FUERMAN</p> <p>2 MR. BRAUTIGAM: Objection.</p> <p>3 A. That may be, but it would not change</p> <p>4 my answer.</p> <p>5 Q. Are you aware that because the SEC</p> <p>6 realized that many, many financial</p> <p>7 institutions in the publically reported had</p> <p>8 precisely the same problem has Provident did,</p> <p>9 that they issued that so they would not have</p> <p>10 to restate?</p> <p>11 MR. BRAUTIGAM: Objection. Jim, are</p> <p>12 you representing you aware of what the</p> <p>13 SEC realized and what the SEC's thought</p> <p>14 process?</p> <p>15 MR. BURKE: Yes.</p> <p>16 Q. Are you aware of that?</p> <p>17 A. I'm not sure to what extent what you</p> <p>18 are saying is true. I would want to check the</p> <p>19 facts out for myself.</p> <p>20 Q. At least as you sit here today</p> <p>21 that's news to you, isn't it, that the genesis</p> <p>22 and the impetus for that merging issues task</p> <p>23 force bulletin was the Provident RVI situation</p> <p>24 and the PWC analysis?</p> <p>25 MR. BRAUTIGAM: Objection.</p>	<p style="text-align: right;">Page 248</p> <p>1 FUERMAN</p> <p>2 about the nature of the Wells Fargo</p> <p>3 restatement and how it compares to PFGI</p> <p>4 restatement"?</p> <p>5 A. I believe that he did, yes.</p> <p>6 Q. Even though you really don't know</p> <p>7 the comparison of how Provident's situation</p> <p>8 relates to Wells Fargo?</p> <p>9 A. Well, now I know it's more. Let's</p> <p>10 assume that it is true, as you allege, that</p> <p>11 the impetus for the SEC observer's statement</p> <p>12 came from PricewaterhouseCoopers, after it</p> <p>13 cleaned up the accounting mess at Provident.</p> <p>14 Still, that does not excuse what occurred at</p> <p>15 Provident.</p> <p>16 Q. I understand that.</p> <p>17 A. What occurred at Provident is in</p> <p>18 excusable. Just because subsequently the SEC</p> <p>19 moved to try to take care of a problem at</p> <p>20 Wells Fargo, that bears some similarity to</p> <p>21 Provident, you cannot say that -- you can't</p> <p>22 get on a time machine and suddenly transport</p> <p>23 PFGI's restatement subsequent to, you know,</p> <p>24 the time when the SEC observer came out</p> <p>25 May 15, 2003.</p>
<p style="text-align: right;">Page 247</p> <p>1 FUERMAN</p> <p>2 A. I was not aware of that.</p> <p>3 Q. Are you aware that the parties who</p> <p>4 were subject to that, such as Wells Fargo,</p> <p>5 were permitted to correct their RVI insurance</p> <p>6 before the close of their next year, and if</p> <p>7 they did so they would not have to restate?</p> <p>8 A. I don't remember that detail.</p> <p>9 Q. Are you aware that because Provident</p> <p>10 had already restated they didn't get the</p> <p>11 benefit of that?</p> <p>12 MR. BRAUTIGAM: Objection.</p> <p>13 A. I'm not sure that is true. That's</p> <p>14 what has been alleged in some deposition</p> <p>15 transcripts, that's all.</p> <p>16 Q. In paragraph 23 you have another</p> <p>17 statement in there about the CFO intentionally</p> <p>18 misstating his personal knowledge and belief.</p> <p>19 That's based upon the same expertise you</p> <p>20 talked about earlier, your certified --</p> <p>21 A. Which paragraph are you referring</p> <p>22 to?</p> <p>23 Q. Paragraph 23, the third line from</p> <p>24 the bottom. "I believe the CFO intentionally</p> <p>25 misstated his personal knowledge and belief</p>	<p style="text-align: right;">Page 249</p> <p>1 FUERMAN</p> <p>2 Q. What is the basis for your statement</p> <p>3 though that Mr. Carrie intentionally misstated</p> <p>4 his personal knowledge and belief about the</p> <p>5 nature of the Wells Fargo restatement?</p> <p>6 A. He has to know. It's entirely</p> <p>7 different.</p> <p>8 Q. It's the same issue about RVI</p> <p>9 insurance, it's not entirely different.</p> <p>10 MR. BRAUTIGAM: Objection,</p> <p>11 argumentative and you don't have to</p> <p>12 accept Mr. Burke's representations or</p> <p>13 misrepresentations.</p> <p>14 Q. Do you understand that?</p> <p>15 A. The important distinction between</p> <p>16 Wells Fargo and Provident is the SEC observer</p> <p>17 makes an announcement, subsequent to that</p> <p>18 Wells Fargo restates. Prior to that Provident</p> <p>19 restates. It makes a large difference.</p> <p>20 Q. Based upon that you draw this</p> <p>21 conclusion?</p> <p>22 A. Yeah. I conclude that Mr. Carrie</p> <p>23 must know and understand that difference also.</p> <p>24 Q. The basis for that is your own</p> <p>25 subjective judgment, as you've described it</p>

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2 previously?

3 A. No. My judgment informed by my

4 studies to become a certified fraud examiner

5 and my further studies and research in

6 teaching fraud examination, and in attending

7 the PricewaterhouseCoopers workshop.

8 Q. Paragraph twenty-four, page 12.

9 MR. COHEN: Would this be a good

10 time to break? It's about four.

11 MR. BURKE: I'm going to wait. I'm

12 going to try to ask a couple more

13 questions.

14 Q. You state that the CFO asserted the

15 present value analysis to applicable to cash,

16 as applicable to net income. You continue,

17 this is a lie by the CFO who knows better.

18 A. How could he not know better? I

19 think my Accounting 201 students, after they

20 have finished their semester with me, they are

21 not rocket scientists, they are just

22 sophomores in college, but they understand

23 it's very important, the timing of net income.

24 Q. We're not talking about "timing."

25 We're talking about "present value analysis"?

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2 A. We're talking about present value

3 analysis in the context of timing. Present

4 value analysis is the kind of timing analysis.

5 Q. Present value analysis applies to

6 cash flows; is that true?

7 A. Only in a very narrow sense if you

8 are talking about cash management. If you are

9 talking about financial statement analysis,

10 the timing of net income is critically

11 important to any kind of equity valuation.

12 Q. Take a look at page 14 of your

13 report, where you are talking about Mr. Cook.

14 A. Yes.

15 Q. You talk about FASB 1978, paragraph

16 25, and you quote --

17 A. Where are you?

18 Q. Paragraph 28, page 14. I apologize.

19 You quote FASB 1978, paragraph 25. It says,

20 "Potential users of financial information most

21 directly concerned with a particular business

22 enterprise are generally interested in its

23 ability to generate favorable cash flows

24 because their decisions relate to amounts

25 timing and certainties of expect cash flows."

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2 A. That's true.

3 MR. BRAUTIGAM: Uncertainties.

4 MR. BURKE: Uncertainties, right.

5 A. But it's well established in the

6 accounting literature, going back to Payton

7 and Littleton, in 1940, that the way a

8 financial statement analysis should be

9 conducted to determine the likelihood of

10 future cash flow from a company is not by

11 studying the current cash flow, but by

12 studying the current earnings.

13 Those are regarded as far more

14 reliable. They are not ironclad reliable, but

15 they are regarded as more reliable indicators

16 of the future cash flow than the current cash

17 flow is.

18 Q. You understand obviously that

19 receipt of cash is not equal to recognition of

20 income?

21 A. No, but it's well established in

22 financial statement analysis that a company

23 recognizing earnings per share now, it can be

24 extrapolated that there is a certain

25 likelihood of a certain amount of earnings per

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2 share in the future, and then built on top of

3 that there's extrapolations as to what that

4 means for equity valuation.

5 MR. BURKE: Why don't we take a

6 fifteen minute break.

7 (Recess taken.)

8 (Record read.)

9 Q. Professor Fuerman, when Provident's

10 accounting for the leverage lease

11 transactions, that were the subject to the

12 restatement, are you aware that the underlying

13 cash flows did not change?

14 A. Oh, yes, I'm very much aware of

15 that.

16 Q. You've heard of "discounted cash

17 flow analysis"?

18 A. Are we on a particular page,

19 particular paragraph sort of?

20 Q. Not yet. We're sort of on paragraph

21 24, where we were talking about cash flows.

22 A. Okay.

23 Q. You are aware of a "discounted cash

24 flow analysis," you've heard of that?

25 A. Yes.

<p style="text-align: right;">Page 254</p> <p>1 FUERMAN</p> <p>2 Q. Is that something that you are</p> <p>3 familiar with performing?</p> <p>4 A. I must have done it in a finance</p> <p>5 course. I had a finance course, or two, in my</p> <p>6 Ph.D. program, but it's not something I do in</p> <p>7 my work now.</p> <p>8 Q. That's my question. Have you ever</p> <p>9 heard of a "discounted net income analysis,"</p> <p>10 it's done by finance professionals?</p> <p>11 A. That exact term, no, I've not.</p> <p>12 Q. In paragraph 27 you render certain</p> <p>13 opinions regarding the deposition of</p> <p>14 Dr. Stager.</p> <p>15 A. Yes.</p> <p>16 Q. Again, that is based upon your</p> <p>17 reading of his deposition?</p> <p>18 A. That is correct.</p> <p>19 Q. The last sentence on that page,</p> <p>20 "However, these are strong affirmations of</p> <p>21 plaintiffs' positions on restatements and</p> <p>22 materiality, given the context of the intense</p> <p>23 pressure (strategic interrupts with extremely</p> <p>24 frequented repetitious objections exerted by</p> <p>25 three attorneys for the defendants (against</p>	<p style="text-align: right;">Page 256</p> <p>1 FUERMAN</p> <p>2 here as an expert witness on accounting and</p> <p>3 auditing, but I have been exposed to the basic</p> <p>4 level of what goes on at a deposition and</p> <p>5 seen, you know, Irving Younger and others</p> <p>6 discuss what goes on. It's just obvious to me</p> <p>7 that Dr. Stager's replies to certain questions</p> <p>8 were influenced by highly, you know, very</p> <p>9 frequent strategic interruptions by three</p> <p>10 defense counsel, yourself cloud.</p> <p>11 Q. I wasn't at Dr. Stager's deposition?</p> <p>12 A. Maybe it was -- I take that back.</p> <p>13 There were three attorneys for the defendants.</p> <p>14 I'm sorry if I did not recollect that you were</p> <p>15 one of them.</p> <p>16 Q. Maybe you didn't read it as</p> <p>17 carefully as thought.</p> <p>18 MR. BRAUTIGAM: Excuse me, Jim, are</p> <p>19 you representing you were not at</p> <p>20 Mr. Stager's first deposition?</p> <p>21 MR. BURKE: No. The second one, the</p> <p>22 one he is referring to here.</p> <p>23 MR. BRAUTIGAM: How do you know he</p> <p>24 is referring to that one?</p> <p>25 MR. BURKE: Because there weren't</p>
<p style="text-align: right;">Page 255</p> <p>1 FUERMAN</p> <p>2 one for the plaintiffs) throughout the</p> <p>3 deposition to thwart Dr. Stager from making</p> <p>4 any meaningful statement on these issues.</p> <p>5 A. Yes, what is your question?</p> <p>6 Q. What in your experience in your</p> <p>7 experience or background gives you the</p> <p>8 supposed expertise to opine on the nature of</p> <p>9 how one behaves or conducts or defends a</p> <p>10 deposition?</p> <p>11 A. I have not been deposed before</p> <p>12 today, however, I have observed a number of</p> <p>13 depositions when I was an associate at Enz</p> <p>14 Jones LeGrand. I know that the behavior of</p> <p>15 the attorneys in the room has a huge impact on</p> <p>16 the testimony of the witnesses, and it was my</p> <p>17 judgment in reading that transcript that that</p> <p>18 was true in the Stager deposition transcript.</p> <p>19 Q. What authoritative treatises,</p> <p>20 studies, data support do you have for making</p> <p>21 judgements of how the conduct of attorneys</p> <p>22 affects deposition testimony, are you aware of</p> <p>23 any?</p> <p>24 MR. BRAUTIGAM: Objection.</p> <p>25 A. I think this is basic stuff. I'm</p>	<p style="text-align: right;">Page 257</p> <p>1 FUERMAN</p> <p>2 three attorneys at his first deposition.</p> <p>3 A. The substance of my remarks about</p> <p>4 page 13 is it doesn't matter about the</p> <p>5 identity of the three attorneys, it's just</p> <p>6 that their behavior had an impact, in my</p> <p>7 opinion, of the response of Dr. Stager.</p> <p>8 MR. BURKE: I'll further note, for</p> <p>9 the record, that he refers in paragraph</p> <p>10 27 of his report to the May 7, 2004</p> <p>11 deposition, which I didn't attend.</p> <p>12 Q. My question is this, and I'm</p> <p>13 assuming for purposes of these questions,</p> <p>14 Professor Fuerman, that although you are an</p> <p>15 accounting materiality expert, you plan to</p> <p>16 come to court and offer these opinions on who</p> <p>17 is telling the truth and who is not telling</p> <p>18 the truth that are contained in that report,</p> <p>19 am I correct on that?</p> <p>20 A. Only incidental to the issues of</p> <p>21 materiality restatements.</p> <p>22 Q. Do you intend to come into court and</p> <p>23 talk about how Mr. Carrie was intentionally</p> <p>24 lying and Mr. Hoverson's testimony and</p> <p>25 Mr. Stager's testimony or not?</p>

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2 A. I'm prepared to testify as to

3 anything that's contained in my expert report

4 or anything I say at this deposition.

5 Q. That's fine. To the extent you plan

6 to do that, then my next question is, and I

7 don't think I got an answer to this, what

8 treatises, what training, what objective data

9 are you relying upon, what studies in your

10 field of expertise do you believe support your

11 theory that conduct of the attorneys at this

12 deposition affected Dr. Stager's testimony?

13 MR. BRAUTIGAM: Objection.

14 Q. What authoritative studies are you

15 referring to that would support your

16 conclusions?

17 MR. BRAUTIGAM: Objection.

18 Q. If you know of any?

19 MR. BRAUTIGAM: Objection.

20 A. I believe I can reasonably

21 extrapolate from my studies of interviews and

22 interrogations in general to support the

23 opinions I express regarding Dr. Stager's

24 answers on his deposition transcript.

25 Q. In the interview and interrogation

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2 techniques that you referred to and that you

3 talked about previously, was the witness

4 represented by counsel?

5 A. I believe that you can extend the

6 general notions that are expressed in these

7 courses on interviews and interrogation to a

8 deposition. If this is not an interview and

9 interrogation I'd like to know what is.

10 Q. My question is, are the interviews

11 and interrogations that you've studied, as you

12 described them earlier, where the people who

13 are being interviewed in those videos and

14 those courses, were they represented by

15 counsel or not?

16 A. In these particular videos that I

17 saw they were not represented by counsel.

18 Q. So there was nothing that you saw

19 that dealt with the extent to which counsel's

20 behavior affects the testimony of those being

21 interviewed; am I correct?

22 A. That is correct.

23 Q. How many depositions did you observe

24 in your legal career? I apologize if I've

25 asked this before. I know you told me you've

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2 observed some, but I want to know what your

3 best approximation of how many?

4 A. Perhaps half a dozen.

5 Q. Six depositions?

6 A. It's been many years since I've

7 practiced law, so I could be inaccurate.

8 Q. Paragraph 30, page 14. "Sitting on

9 the audit committee of a publicly traded

10 company is a great and serious task."

11 A. Yes.

12 Q. Have you ever sat on the audit

13 committee of a publicly traded company?

14 A. No.

15 MR. BRAUTIGAM: Objection. That was

16 asked and answered.

17 MR. BURKE: I apologize.

18 Q. The next statement is "Members are

19 responsible for reviewing the auditor's work

20 and ultimately the integrity of a firm's

21 financial statements."

22 A. Yes.

23 Q. What's your basis for that?

24 A. The SEC Rules, the New York Stock

25 Exchange and NASDAQ listing rules specific to

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2 audit committees, journal articles that have

3 discussed this, one of the authors whose last

4 name is Braiotta, B-R-A-I-O-T-T-A,

5 Lou Braiotta. This is something that has been

6 discussed many years.

7 The blue ribbon panel on audit

8 committees that, it's late 1990s, I can't

9 remember if that's an SEC thing or if that was

10 an AICPA thing or exactly. All of this has

11 been brewing and speculating throughout

12 accounting and auditing for a number of years.

13 Q. I know you told me you didn't sit on

14 an audit committee meeting. Have you ever

15 attended an audit committee meeting?

16 A. No.

17 MR. BRAUTIGAM: Committee in that

18 prior question.

19 MR. BURKE: I meant to say that if I

20 didn't. What did I say?

21 MR. BRAUTIGAM: Meeting.

22 Q. Audit committee meeting, have you

23 ever attended an audit committee meeting?

24 A. No, I have not.

25 Q. The last sentence on page 14, you



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2 were talking here about Mr. Grotti.  
3 A. Yes.  
4 Q. Begins on the bottom of page 14.  
5 "His attitude toward the fact that his  
6 subsequent restatement of previously issued  
7 financial statements is an admission that they  
8 were materially misstated, question mark, in  
9 comprehensiveness period."  
10 A. Yes.  
11 Q. What does that mean? I don't  
12 understand that.  
13 A. Let me see if I can make you  
14 understand. Mr. Grotti did not have the  
15 ability to understand the fundamental  
16 financial statements of PFGI, and that's  
17 actually the NASDAQ standard for audit  
18 committee members, to have that level of  
19 knowledge.  
20 New York Stock Exchange uses the  
21 phrase "financial literacy." He didn't seem  
22 to have an understanding of the fundamental  
23 financials. It's also in part of the rules of  
24 both exchanges and the SEC that audit  
25 committee members have some notion, some

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2 understanding of what their duties are.  
3 He just did not seem to be there.  
4 He was a contrast to Dr. Stager and Mr. Cook,  
5 who I would say had the ability to understand  
6 financial statements.  
7 Q. You have no knowledge of  
8 Mr. Grotti's business background or his  
9 familiarity with financial statements and  
10 financial concepts?  
11 A. Beyond what is contained in his  
12 deposition transcript, no.  
13 Q. You have no knowledge of the extent  
14 to which he does review financial statements  
15 in the course of his business or even in the  
16 course of Provident's business activities,  
17 correct?  
18 A. It was elucidated pretty well what  
19 his lack of knowledge of financial accounting  
20 was in his transcript. I think it was an  
21 appalling lack of knowledge that he  
22 demonstrated throughout his deposition.  
23 Q. That's based upon -- strike that.  
24 A. It's based upon my reading of the  
25 deposition transcript of Mr. Grotti, my

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2 understanding of the duties of an audit  
3 committee member from the accounting and  
4 auditing literature, from reading the SEC  
5 Rules, the Stock Exchange rules.  
6 Q. The word "incomprehensiveness," I  
7 don't understand what that means?  
8 A. It means somebody who does not even  
9 begin to comprehend what is being asked.  
10 Q. Incomprehension?  
11 A. Yes.  
12 Q. What does that refer to or who does  
13 that refer to?  
14 A. It refers to Mr. Grotti.  
15 Q. Okay.  
16 A. Who did not comprehend many things  
17 about financial accounting and auditing and,  
18 in particular, had no concept of what it means  
19 so far as the original reported financial  
20 statements when there subsequently is a  
21 restatement.  
22 Q. Do you believe that a member of an  
23 audit committee has to be conversant with the  
24 details of generally accepted accounting  
25 principles?

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2 A. No, he does not need to be  
3 conversant with the details of the accounting  
4 standards or GAAP. He needs to have a  
5 threshold knowledge of those know.  
6 Q. Do you believe that a member of an  
7 audit committee has to have knowledge of  
8 detailed concepts of generally accepted  
9 auditing standards?  
10 A. No. But, again, he has to have a  
11 threshold knowledge of those because it's the  
12 job of the audit committee to engage the  
13 auditor, to supervise the auditor, to decide  
14 whether it's appropriate for the auditor to do  
15 this task or that task in addition to the  
16 audit, because conceivably it could result in  
17 an impairment of auditor quality.  
18 It's the job of the audit committee  
19 to decide whether to recommend the  
20 reappointment of an auditor, to have some  
21 ability to evaluate the quality of the  
22 auditor?  
23 Q. So long as an audit committee  
24 member, in your phraseology, has a threshold  
25 knowledge of financial affairs, financial

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2 statements, accounting concepts, auditing

3 concepts, is that sufficient?

4 A. Yes.

5 MR. BRAUTIGAM: Objection.

6 Q. For financial literacy?

7 A. I don't know if I should use the

8 phrase "threshold knowledge" that you used.

9 The NASDAQ standard in PFGI, on NASDAQ, is

10 have a knowledge and understanding of

11 fundamental financial statements.

12 Q. Just so I got it right, the NASDAQ

13 standard for financial literacy is a knowledge

14 and understanding of fundamental financial

15 statements?

16 A. Something along those lines.

17 Q. You wouldn't expect a member of the

18 audit committee to necessarily understand all

19 the detailed accounting issues and accounting

20 concepts involved in the Provident

21 restatements and the accounting issues

22 underlining, would you?

23 A. What I would expect is overall for

24 the audit committee members to have maybe what

25 you term a threshold knowledge of accounting

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2 and auditing. But when it comes up that a

3 company needs to consider whether to restate

4 or not, then I think in that situation it's

5 the duty of the audit committee members to

6 bring themselves to a higher level of

7 knowledge.

8 This is why the outside C.P.A. firm

9 is there, for them to provide this input to

10 the audit committee members and educate them,

11 if need be, that a certain situation has

12 occurred and you, the members of the audit

13 committee, need to know -- need to spend some

14 time learning more about this specific area of

15 GAAP.

16 That's what I would expect.

17 Q. In that circumstance you would

18 expect an audit committee to bring in experts

19 to explain the issues to them and to try to

20 elevate their understanding of some of these

21 issues so they could make decisions about

22 them?

23 A. Yes. Anytime the audit committee

24 feels they don't understand something, it's

25 incumbent on them to get ahold of people who

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2 can advise them, whether it's people internal

3 to the company or external to the company.

4 Q. You would not expect a member of the

5 audit committee necessarily to be able to

6 define from an accounting standpoint the

7 difference between a "finance lease" and an

8 "operating lease," would you?

9 A. I would expect them -- well. I mean

10 it's expected that a member of an audit

11 committee should be more conversant about the

12 financial accounting that is critically

13 important to that particular company. The

14 audit committee of a steel manufacturer, no, I

15 would not expect to know those kind of things.

16 But at Provident, they would know a bit more.

17 Q. "A bit more"?

18 A. A good bit more about the difference

19 between an "operating lease" and a "finance

20 lease" and a "sales lease," "back lease."

21 Q. Your testimony and your opinion with

22 respect to Mr. Grotti's knowledge and

23 understanding of fundamental financial

24 statements is based solely upon your review of

25 this deposition; is that correct?

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2 A. That is correct. I've never met

3 him, I don't know what he looks like.

4 Q. Paragraph 34 of your report. We

5 talked a little bit about this before, but I

6 just want to go over it again.

7 A. Certainly.

8 Q. The first sentence states, "The full

9 extent of the restatement to the yearend

10 December 31, 1999, both with regard to net

11 income and EPS was a 16 percent decrease."

12 A. Yes, I wrote that.

13 Q. It's fair to say that all the facts

14 regarding the Provident restatements were not

15 fully known and fully understood and the full

16 financial extent of that was not communicated

17 until April 15, 2003?

18 A. Absolutely correct.

19 MR. BRAUTIGAM: Objection.

20 Q. It's also a fact that from

21 April 15th forward, after that second

22 announcement occurred Provident's stock price

23 increased, correct?

24 A. That is correct. Are you implying

25 something from that?

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2 Q. I'm not implying anything. I'm just

3 asking questions and you are answering, and

4 you did.

5 You indicate -- the 16 percent

6 decrease which occurs on paragraph 64.

7 A. Right.

8 Q. Now, lower in the paragraph, the

9 second statement to last statement on the page

10 refers to, "A first order approximation of the

11 first three quarters overstatement of net

12 income in EPS is logically 16 percent."

13 A. Yes.

14 Q. What you do in those two sentences

15 is say that because the impact on net income

16 and EPS at December 31, 1999 was 16 percent,

17 necessarily the first three quarters must also

18 have been off by 16 percent?

19 A. That's not what first order of

20 approximation means.

21 Q. What does it mean?

22 A. First order of approximation means

23 that roughly this is what I estimate the

24 overstatement of the first three quarters of

25 '99 was.

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2 Q. But that's your estimate?

3 A. That is my estimate.

4 Q. Are you aware that the lease

5 accounting issue dealt with securitization

6 transactions?

7 A. Yes.

8 Q. Do you know what a "securitization

9 transaction" is?

10 A. Roughly.

11 Q. Tell me what your understanding is?

12 A. Roughly, it means that instead of

13 simply Provident leasing a car to John Doe in

14 Indian Hill, or wherever, that Provident

15 gathers together very large numbers of leases

16 to various people, pools them together and

17 creates from that a security, which is sold to

18 investors who can make use of that security

19 for one reason or another, maybe for cash flow

20 reasons or for tax reasons.

21 That's what it did. I'm aware that

22 perhaps some of the accruals would be made at

23 yearend on the securitization transactions.

24 Q. When you look at the numbers for

25 March and June quarter ends 1999, do you know

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2 whether or not those include leases as

3 originally booked or those numbers reflect

4 securitization transactions?

5 MR. BRAUTIGAM: Objection.

6 Q. Of those leases?

7 MR. BRAUTIGAM: Objection.

8 A. To what extent, I don't know. I do

9 know, remember reading in some transcript or

10 report somewhere, that there were periodically

11 securitizations that were done. Exactly when,

12 what the timing is I don't know.

13 Q. Since the error dealt with the

14 estimation of income and expense on the

15 securitization transactions, to the extent

16 what was reflected on those books was the

17 original leases in which they were not

18 estimating income and expense, the impact or

19 the restatement on those prior financials

20 would be uncertain, correct?

21 MR. BRAUTIGAM: Objection.

22 A. There is uncertainty as to how to

23 allocate this. I think what you are trying to

24 get at, maybe I can speed this up, is that

25 there have been cases where there have been

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2 financial statement frauds where companies

3 would do things, like they would take some

4 quarterly financial statements and they would

5 take maybe one quarterly financial statement,

6 multiply it times four and say this is what we

7 have for the year or they would work the other

8 direction.

9 Obviously that is contrary to GAAP.

10 It's improper. But in the context of this

11 report, I feel that given the dearth of

12 information that I had about the quarters and

13 how they would have been restated if there had

14 been a formal restatement, if that had been

15 disclosed to the public or disclosed to the

16 plaintiffs, I felt I had no reasonable better

17 alternative to do this analysis.

18 Q. I understand that you made an

19 approximation. I think you've also answered

20 my question that how it actually should have

21 been exactly reflected, you don't know?

22 A. That's an open question. There's no

23 doubt about that.

24 Q. Paragraph 37 you talk about Chow,

25 et al?

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2 A. Yes.

3 Q. That's one of the documents that you

4 produced this morning, correct?

5 A. Right, it's in there. It's an

6 article from Accounting Horizons, I believe.

7 Q. I'm not going to ask you from

8 memory. Do you recall the nature of the

9 companies they looked at?

10 A. They looked at companies in the

11 aggregate, thousands of companies. Would you

12 like me to summarize the article?

13 Q. No, I can read it. That's fine.

14 What was the basis for determining average

15 stockholder materiality, if you remember that?

16 A. It was an event study of some sort.

17 I guess I do need to summarize the article a

18 little bit. Chow, et al., start off by

19 acknowledging, as I do, that materiality is a

20 concept. It cannot be definitively reduced to

21 a numerical threshold.

22 However, they then go on to say that

23 throughout the history of accounting and

24 auditing this has been a problem because

25 accountants and auditors need to make

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2 practical decisions on audits, and they need

3 to, nonetheless, sometimes workup some notion

4 of what is a numerical threshold materiality.

5 They developed -- they reasoned what kind of

6 methodology they would need to use, so far as

7 stock market reaction to earnings releases and

8 releases of other, releases of -- I can't

9 remember quarterly or annual financial

10 statements, and then work backwards to see

11 does it appear is indicated by that, as to

12 what is materiality.

13 That's basically what they did.

14 This is an approach to coming up with a

15 tentative numerical materiality threshold,

16 notwithstanding their acknowledgment, as well

17 as my own, that materiality is a concept.

18 Q. Chow, is that a man or woman?

19 A. I can't remember at this point. I

20 have no idea who these people are. They

21 published in a good accounting journal, that's

22 all I know.

23 Q. Is this the sort of analysis that

24 you are comfortable performing yourself?

25 A. No, I don't do capital markets

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2 research.

3 Q. That's my question.

4 A. This is capital markets research.

5 Anytime you are showing or purporting to show

6 something, some sort of relationship between

7 stock market data and accounting information,

8 that's capital markets research.

9 Q. Let's look at paragraph 38, page 18,

10 just to follow-up on that final point. You,

11 therefore, cannot substantiate or confirm the

12 capital markets research that you are

13 referring to here, you are deciding this is a

14 study that does deal with that?

15 A. I can affirm it to a limited extent.

16 We had capital markets Ph.D. seminars in our

17 Ph.D. program at the University of Cincinnati.

18 We all developed a threshold knowledge of the

19 literature and how to read these articles and

20 how to make a judgment as to whether they are

21 well written, well performed research or not.

22 It appeared to be fairly good

23 research. It's a fairly tough journal to get

24 published in, also.

25 Q. But you were not a capital markets

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2 expert?

3 A. I am not a capital markets expert.

4 Q. Paragraph 38, page 18. I think this

5 deals with the subject you raised earlier

6 about "reported earnings per share"?

7 A. That is correct.

8 Q. The 10K in the proxy showed reported

9 earnings per share of \$2.56; correct?

10 A. That is correct.

11 Q. You used a EPS of 248?

12 A. That is correct.

13 Q. Which of those two EPSs would the

14 OHSL shareholders have seen?

15 A. They would have actually seen

16 printed on paper 256.

17 Q. So the number that you have here is

18 adjusted based upon subsequent transactions to

19 the OHSL merger?

20 A. That's right. It flows out of the

21 requirements of APB No. 20 for the company,

22 when determining whether it should or should

23 not restate, look and see what will the

24 difference be between as originally reported

25 and as restated.

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<p style="text-align: right;">Page 278</p> <p>1 FUERMAN</p> <p>2 Now, again, it does not cite a</p> <p>3 numerical threshold. But what I do in</p> <p>4 paragraph 38, page 18, of my report is I say</p> <p>5 if we were to apply this to PFGI, we compare</p> <p>6 248 increasing to 308 originally reported.</p> <p>7 Now I could have said 256 -- do we want to</p> <p>8 talk about this now or do we want to go over</p> <p>9 the Prowse report and talk about it later?</p> <p>10 Q. Let's talk about it now. We're not</p> <p>11 going to go over the Prowse report.</p> <p>12 A. I thought you did. This might be a</p> <p>13 good time to talk about this. I gave you at</p> <p>14 the beginning of the depo a two-paged paper</p> <p>15 clipped thing.</p> <p>16 It's been marked Fuerman 3. I was</p> <p>17 concerned when I read Dr. Prowse's report, his</p> <p>18 assertion that I made an error, in paragraph</p> <p>19 38 here and in other places.</p> <p>20 The requirements of APB No. 20</p> <p>21 require the management to make a decision on</p> <p>22 whether or not to restate based on its</p> <p>23 evaluation of whether the affected periods are</p> <p>24 materially different as originally reported</p> <p>25 versus as they would be if the company decides</p>	<p style="text-align: right;">Page 280</p> <p>1 FUERMAN</p> <p>2 earnings per share way back when.</p> <p>3 So that's why it suddenly changed</p> <p>4 from \$2.56 down to \$2.48 earnings per share</p> <p>5 fully diluted for 1998, and from \$3.29</p> <p>6 earnings per share originally reported for</p> <p>7 year ended 12/31/99, down to \$3.08.</p> <p>8 Those are the numbers that I use in</p> <p>9 my analysis because APB No. 20 says look,</p> <p>10 board of directors, management, you need to</p> <p>11 decide whether to restate, based on how you</p> <p>12 are changing what you've been reporting to</p> <p>13 what you are going to report if you do</p> <p>14 restate.</p> <p>15 You are not supposed to go back and</p> <p>16 look at the original number in this case this</p> <p>17 was reported in the 10K filed 3/30/99 and the</p> <p>18 10K filed 3/29/00. That's not what you are</p> <p>19 supposed to do.</p> <p>20 Now, Dr. Prowse, this bothered me</p> <p>21 because Dr. Prowse, I think he may have even</p> <p>22 used the word "biased" in describing my</p> <p>23 report. If you crunch through these numbers</p> <p>24 and use his numbers instead of mine, it does</p> <p>25 make for a -- if you were to apply that to the</p>
<p style="text-align: right;">Page 279</p> <p>1 FUERMAN</p> <p>2 to restate.</p> <p>3 So now the confusion is, if you look</p> <p>4 at the little spreadsheet I created, it's only</p> <p>5 got four rows and four columns.</p> <p>6 Q. Yes.</p> <p>7 A. You can see that reported EPS '98</p> <p>8 was as Mr. Prowse indicates, \$2.56 in the</p> <p>9 financials for the year ended 12/31/98 and,</p> <p>10 again, for the annual financials for the year</p> <p>11 ended 12/31/99. But then it dips down to</p> <p>12 \$2.48.</p> <p>13 The reason it dipped down is because</p> <p>14 of what happened during the year ended</p> <p>15 12/31/99, or actually I should go back. It</p> <p>16 didn't actually happen during the yearend</p> <p>17 12/31/99, it happened shortly after the year</p> <p>18 ended 12/31/99. There was a pooling of</p> <p>19 interest merger.</p> <p>20 Provident acquired Centennial Bank,</p> <p>21 or the parent of Centennial Bank, and</p> <p>22 according to APB 20 you need to do -- some</p> <p>23 call it a statement, some use other</p> <p>24 statements, but you need to retroactively</p> <p>25 change what you've been saying was your</p>	<p style="text-align: right;">Page 281</p> <p>1 FUERMAN</p> <p>2 chart that I created here, if we changed this</p> <p>3 from 248 to 256, as he suggests that we should</p> <p>4 do, what would the percentage decrease be? It</p> <p>5 would not be 4 percent for the before and</p> <p>6 after restatement affect, it would be 7</p> <p>7 percent.</p> <p>8 So if we go and do as Dr. Prowse</p> <p>9 suggests, I think you actually weaken your own</p> <p>10 client's case. Because you are saying that</p> <p>11 actually there was a 7 percent decrease in net</p> <p>12 income for 1998, not a 4 percent decrease. I</p> <p>13 can show you how that computation is made.</p> <p>14 Q. No, that's fine. Dr. Prowse</p> <p>15 indicated that in the proxy statement and in</p> <p>16 the 10K the earnings per share were 256?</p> <p>17 A. That's correct.</p> <p>18 Q. As of the time of the proxy</p> <p>19 statement that the individuals looked at, for</p> <p>20 1998?</p> <p>21 A. That's what he indicated.</p> <p>22 Q. That's what it showed?</p> <p>23 A. That's what it showed, but the</p> <p>24 proper analysis is to use my number \$2.48, not</p> <p>25 his 256. His number reflects lack of</p>



<p style="text-align: right;">Page 282</p> <p>1 FUERMAN</p> <p>2 understanding of what APB No. 20 requires for</p> <p>3 the proper analysis in this situation.</p> <p>4 Q. The 10K by your own second page</p> <p>5 indicates the 10K filed 3/30/99 showed an</p> <p>6 earnings per share of 256, for 1998, correct?</p> <p>7 Look at the second page of your spreadsheet,</p> <p>8 over to your left. The 10K filed 3/30/99</p> <p>9 reported 1998 earnings per share of 256?</p> <p>10 A. Correct.</p> <p>11 Q. The 10K filed 3/29/2000 for 1998</p> <p>12 reflected an earnings per share of 256?</p> <p>13 A. Right.</p> <p>14 Q. It was not until the 10K filed</p> <p>15 March 15, 2001 that the revised number you</p> <p>16 used appeared, correct?</p> <p>17 A. That's correct, but that is the</p> <p>18 number that APB No. 20 says you should use.</p> <p>19 Q. I understand. OHSL shareholders</p> <p>20 though, assuming they ever looked at earnings</p> <p>21 per share numbers, at the time of this proxy</p> <p>22 statement and even the year following the</p> <p>23 proxy statement, all they would have seen is</p> <p>24 the \$2.56 earnings per share number for 1998?</p> <p>25 A. That's right. Another thing, if we</p>	<p style="text-align: right;">Page 284</p> <p>1 FUERMAN</p> <p>2 and objective as humanly possible.</p> <p>3 Q. Take a look at paragraph 39, this</p> <p>4 refers to figure one in your report. Page 18.</p> <p>5 You claim that this chart, "Figure one depicts</p> <p>6 the future EPS expectation of an OHSL</p> <p>7 stockholder in the fall of 1999;" is that</p> <p>8 correct?</p> <p>9 A. Right. Dr. Prowse is correct there,</p> <p>10 my motive --</p> <p>11 Q. I'm sorry, go head.</p> <p>12 A. No, I interrupted you.</p> <p>13 Q. You say, "The figure one depicts the</p> <p>14 future EPS expectation of an OHSL stockholder</p> <p>15 in the fall of 1999 is as reflected on figure</p> <p>16 one?"</p> <p>17 A. Correct.</p> <p>18 Q. Are you aware of any methodology,</p> <p>19 techniques, authoritative treatises or</p> <p>20 anything else that would substantiate</p> <p>21 calculating the future EPS expectation of an</p> <p>22 OHSL stockholder in this fashion?</p> <p>23 A. Yes.</p> <p>24 Q. What's that?</p> <p>25 A. Bernstein and Wild Financial</p>
<p style="text-align: right;">Page 283</p> <p>1 FUERMAN</p> <p>2 we're going to use the original numbers, for</p> <p>3 example, Dr. Prowse by his analysis suggests</p> <p>4 that earnings per share originally reported</p> <p>5 for 1999, what ought to be used is \$3.29, not</p> <p>6 the \$3.08 that I use.</p> <p>7 If we do that it causes the net</p> <p>8 income decrease originally reported or, excuse</p> <p>9 me, reported prior to March 5th and April 15,</p> <p>10 2003. It causes the before and after to</p> <p>11 become a 21 percent decrease in net income.</p> <p>12 Again, I think that this weakens your case</p> <p>13 that we use Dr. Prowse's analysis rather than</p> <p>14 my own.</p> <p>15 Now, I was fully aware that it would</p> <p>16 be possible to use the numbers Dr. Prowse used</p> <p>17 in his analysis when I wrote my expert report,</p> <p>18 but I didn't do that. Then I think I really</p> <p>19 would have been biased in my expert report</p> <p>20 because I would have been showing a more</p> <p>21 dramatic decrease in before versus after.</p> <p>22 I would not be doing the analysis</p> <p>23 according to the way APB No. 20 tells me to</p> <p>24 do. Frankly, I feel that my work should stand</p> <p>25 on its own and be interpreted as independent</p>	<p style="text-align: right;">Page 285</p> <p>1 FUERMAN</p> <p>2 Statement Analysis, the starting point for</p> <p>3 prognosticating what future earnings per share</p> <p>4 are going to be is by looking at historical</p> <p>5 earnings per share.</p> <p>6 Q. This is one year, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Do you believe, therefore, it is</p> <p>9 reasonable to say that because earnings per</p> <p>10 share in one year, increased by 24 percent as</p> <p>11 you calculated here, that it is reasonable to</p> <p>12 assume that into the future will always</p> <p>13 increase at 24 percent?</p> <p>14 A. No, that would be unreasonable.</p> <p>15 I'll explain why I did the analysis the way I</p> <p>16 did. Bernstein Wild, and others who do this</p> <p>17 kind of analysis, say it makes sense to look</p> <p>18 at a string of earnings per share, if you are</p> <p>19 just going to use annual financial statements,</p> <p>20 look at several years into the past.</p> <p>21 I couldn't go -- I mean it would</p> <p>22 have been a better analysis had I been able to</p> <p>23 go, say, five years in the past. But I could</p> <p>24 only do two years because only two years at</p> <p>25 most, by any kind of extrapolation or</p>

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<p style="text-align: right;">Page 286</p> <p>1 FUERMAN</p> <p>2 anything, then you show a difference between</p> <p>3 reported EPS versus restated EPS.</p> <p>4 That's why I confined myself just</p> <p>5 to -- if you look at this chart, on the first</p> <p>6 two data points are comparing originally</p> <p>7 reported versus -- I mean prior to the</p> <p>8 restatements of the spring of 2003, those</p> <p>9 compared to how it was restated after the</p> <p>10 spring of 2003.</p> <p>11 What would be a better analysis is</p> <p>12 if I had four or five data points instead of</p> <p>13 just two data points, but that's all there</p> <p>14 are.</p> <p>15 Q. But my question is, is it reasonable</p> <p>16 based upon your Bernstein Wild analysis, which</p> <p>17 you are citing, to extrapolate that because</p> <p>18 for two data points earnings per share</p> <p>19 increased by 24 percent, it would continue to</p> <p>20 increase by 24 percent all the way through</p> <p>21 2005? Did Bernstein and Wild support that?</p> <p>22 A. They would support this given the</p> <p>23 situation I'm in where I've got a measly two</p> <p>24 data points. They couldn't I think conceive</p> <p>25 of me being in this situation. If the fact</p>	<p style="text-align: right;">Page 288</p> <p>1 FUERMAN</p> <p>2 situation in the spring of 2003. They never</p> <p>3 knew about that stuff.</p> <p>4 All my analysis, my charts, my</p> <p>5 graphs are geared towards the kind of analysis</p> <p>6 that management is supposed to make in</p> <p>7 determining materiality, whether they should</p> <p>8 or should not restate in the spring of 2003.</p> <p>9 I'm using that as a depiction of how</p> <p>10 it would affect investors. I'm not saying</p> <p>11 that's exactly how it would affect investors.</p> <p>12 I'm very limited in the data I have to work</p> <p>13 with.</p> <p>14 Q. That's where I'm confused. You</p> <p>15 state that figure one depicts the future EPS</p> <p>16 expectations of an OHSL stockholder in the</p> <p>17 fall of 1999.</p> <p>18 What's your basis for saying that</p> <p>19 any OHSL shareholder had any such expectation?</p> <p>20 What data to you rely upon to substantiate</p> <p>21 that was the expectation of OHSL shareholders?</p> <p>22 A. The data I rely upon is the</p> <p>23 originally reported versus restated data</p> <p>24 points of year end '98, year end '99. I</p> <p>25 extrapolate from those. I acknowledge that</p>
<p style="text-align: right;">Page 287</p> <p>1 FUERMAN</p> <p>2 pattern were a little bit different, let's say</p> <p>3 that the OHSL --</p> <p>4 Q. Before we go into hypotheticals, let</p> <p>5 me keep asking questions.</p> <p>6 MR. BRAUTIGAM: I object to your</p> <p>7 interrupting the witness. You have the</p> <p>8 right to finish the answer if you are not</p> <p>9 finished.</p> <p>10 Q. Professor Fuerman, you know that 24</p> <p>11 percent earnings per share growth was not</p> <p>12 being projected by any of the analysts</p> <p>13 following Provident at this point in time,</p> <p>14 correct?</p> <p>15 A. That's another aspect of</p> <p>16 Dr. Prowse's approach which I think is</p> <p>17 improper and against the spirit and the</p> <p>18 instructions of APB No. 20. Those analysts,</p> <p>19 in December of '99, January 2000, they didn't</p> <p>20 have the knowledge of the restatements that</p> <p>21 occurred in the spring of 2003.</p> <p>22 What APB No. 20 is directed at is</p> <p>23 what are the kinds of analysis that management</p> <p>24 should make in determining whether to restate</p> <p>25 when they are presented with this dramatic</p>	<p style="text-align: right;">Page 289</p> <p>1 FUERMAN</p> <p>2 it's an unreasonable extrapolation compared to</p> <p>3 if I had more data points available. This is</p> <p>4 all the data points I have.</p> <p>5 Q. As before, it's true that you did</p> <p>6 not do any kind of a survey, polling or</p> <p>7 anything else to determine specifically what</p> <p>8 EPS expectations of any OHSL stockholders</p> <p>9 were?</p> <p>10 A. No, I do not. What I'm depicting</p> <p>11 here is dictated by APB No. 20, not by -- and</p> <p>12 APB No. 20 doesn't say anything about</p> <p>13 conducting an opinion poll of the shareholders</p> <p>14 of the corporation. It says management, you</p> <p>15 should look and see what's the difference</p> <p>16 between earnings per share reported, earnings</p> <p>17 per share restated.</p> <p>18 It doesn't say exactly how you</p> <p>19 should look at that. That's why I look at it</p> <p>20 one way in this table, in terms of percentage</p> <p>21 decrease, and I look at it in a chart a</p> <p>22 different way, a trend analysis here.</p> <p>23 APB No. 20 doesn't dictate either approach.</p> <p>24 These are just approaches that seem</p> <p>25 reasonable to me, that are in the spirit of</p>